



January 31, 2001

SENATE BILL No. 337

DIGEST OF SB 337 (Updated January 30, 2001 2:09 PM - DI 84)

Citations Affected: IC 8-21; IC 36-7.

Synopsis: Regulated structures. Defines "noise sensitive purpose". Creates notice requirements for regulated tall structure permits and permits for construction in a noise sensitive area. Requires that a permit for construction in a noise sensitive area be filed with the county recorder of the county in which the structure is erected. Provides that a permit for construction in a noise sensitive area is valid only after the Indiana department of transportation receives a copy of the recorded permit containing the seal of the county recorder. Requires the Indiana department of transportation to consider a permit for a regulated structure for 60 days before making a final determination. Requires an applicant for a regulated tall structure permit or for a construction in a noise sensitive area permit to provide written evidence to the department that the structure will not violate certain obstruction standards. Applies obstruction standards to both existing airports and heliports as well as to an expansion of an airport or heliport certified by a licensed professional engineer. Requires that a permit from the Indiana department of transportation must be approved for a regulated tall structure before a zoning change may be made for land that involves the structure.

Effective: July 1, 2001.

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January 16, 2001, read first time and referred to Committee on Commerce and Consumer Affairs.
January 30, 2001, amended, reported favorably — Do Pass.

SB 337—LS 7468/DI 94+



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January 31, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE BILL No. 337

A BILL FOR AN ACT to amend the Indiana Code concerning transportation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 8-21-10-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. As used in this
3 chapter:
4 "Department" refers to the Indiana department of transportation.
5 "Noise sensitive purpose" means a building or structure used as
6 a residence, school, church, child care facility, medical facility,
7 retirement home, or nursing home.
8 "Permit" means a permit issued by the department under this
9 chapter.
10 "Person" means any individual, firm, partnership, corporation,
11 company, limited liability company, association, joint stock
12 association, or body politic, including any trustee, receiver, assignee,
13 or other similar representative.
14 "Public-use airport" means any area, site, or location, either on land,
15 water, or upon any building, which is specifically adapted and
16 maintained for the landing and taking off of aircraft, and utilized or to
17 be utilized in the interest of the public for such purposes. The term

SB 337—LS 7468/DI 94+



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does not include:

- (1) any private use airport or landing field; or
- (2) any military airport solely occupied by any federal branch of government using that airport for military air purposes.

"Structure" means any object constructed or installed by man including, but not limited to, cranes, buildings, towers, smokestacks, electronic transmission or receiving towers, **residential buildings or buildings used for a noise sensitive purpose**, and antennae and overhead transmission lines.

SECTION 2. IC 8-21-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) Unless a permit has been issued by the department, a person may not erect, alter, or add to the height of any structure which falls within any one (1) of the following categories:

(1) Any construction or alteration of more than two hundred (200) feet above ground level at its site.

(2) Any construction or alteration of greater height than an imaginary surface extending outward and upward at one (1) of the following slopes:

(A) One hundred (100) to one (1) for a horizontal distance of twenty thousand (20,000) feet from the nearest point of the nearest runway of any public-use airport with at least one (1) runway more than three thousand two hundred (3,200) feet in actual length, excluding heliports.

(B) Fifty (50) to one (1) for a horizontal distance of ten thousand (10,000) feet from the nearest point of the nearest runway of any public-use airport with its longest runway no more than three thousand two hundred (3,200) feet in actual length, excluding heliports.

(C) Twenty-five (25) to one (1) for a horizontal distance of five thousand (5,000) feet from the nearest point of the nearest landing and takeoff area of any public-use heliport.

(3) Any construction or alteration of traverse ways used, or to be used, for the passage of mobile objects if the standards set forth under subdivisions (1) and (2) would be exceeded, but only after the heights of these traverse ways are increased by:

(A) Seventeen (17) feet for an interstate highway where overcrossings are designed for a minimum of seventeen (17) feet vertical distance.

(B) Fifteen (15) feet for any other public roadway.

(C) Ten (10) feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a

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private road.

(D) Twenty-three (23) feet for a railroad.

(E) For a waterway or any other traversed way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it.

(b) Unless:

(1) a permit for construction in a noise sensitive area has been issued ~~issued~~ approved by the department;

(2) the holder of a permit for construction in a noise sensitive area has filed a copy of the permit for construction in a noise sensitive area with the county recorder of the county in which the structure is located, as provided in subsection (d); and

(3) a copy of the recorded permit for construction in a noise sensitive area bearing the seal of the county recorder has been received by the department;

a person may not erect a residential building or other building ~~designed~~ used for a noise sensitive ~~uses~~ purpose within an area lying one thousand five hundred (1,500) feet on either side of the extended centerline of a runway for a distance of one (1) nautical mile from the boundaries of any public use airport.

(c) A person applying for a permit under subsection (a) must provide notice at the time of the filing of the application for a permit to the owner of a public use airport located within:

(1) the county; or

(2) a five (5) mile radius surrounding the structure, regardless of county lines;

where the structure requiring the permit is located.

(d) A person applying for a permit for construction in a noise sensitive area under subsection (b) must provide notice at the time of the filing of the application for a permit to the owner of a public use airport if the public use airport is located within a distance of one (1) nautical mile from the boundary of the property that contains the residential building or other building used for a noise sensitive purpose.

(e) Notice under subsections (b) and (c) must be sent by certified or registered mail, with return receipt requested, and must include the:

(1) name, telephone number, and a contact person for the:

(A) applicant;

(B) department; and

(C) plan commission that has jurisdiction over the site of the structure;



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- 1 (2) location of the structure, including a legal description;
 2 (3) height of the structure; and
 3 (4) Federal Aviation Administration aeronautical study
 4 number assigned to the application.

5 (f) The applicant for a permit under subsection (b) shall record
 6 each permit issued by the department in the office of the county
 7 recorder for the county where the structure is located not later
 8 than five (5) business days after the department issues the permit.
 9 If a structure is located in more than one (1) county, the county
 10 that contains the majority of the structure is the county in which
 11 the permit must be filed.

12 (g) A permit issued under subsection (b) is valid only after the
 13 department receives a copy of the recorded permit bearing the seal
 14 of the county recorder of the county in which the structure is
 15 located.

16 (h) A permit issued under subsection (b) must contain the
 17 following statement:

18 "The permittee acknowledges for itself, its heirs, its
 19 successors, and its assigns, that the real estate described in
 20 this permit experiences or may experience significant levels of
 21 aircraft operations, and that the permittee is erecting a
 22 residential building or other building designed for noise
 23 sensitive use upon the real estate with the full knowledge and
 24 acceptance of the aircraft operations as well as any effects
 25 resulting from the aircraft operations."

26 (i) An applicant for a permit under subsection (a) must provide
 27 written evidence to the department that the structure being
 28 constructed does not violate section 7 of this chapter with regard
 29 to:

- 30 (1) an existing airport; and
 31 (2) a planned expansion of an existing airport if the expansion
 32 plans have been certified by a licensed professional engineer.

33 SECTION 3. IC 8-21-10-6 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. (a) Upon receiving
 35 an application for a permit, the department shall make such
 36 investigation as may be necessary to properly process the application
 37 under this chapter. The investigation shall be conducted so as to
 38 determine, in the opinion of the department, if the proposed structure
 39 erected in the proposed location would have a substantial adverse
 40 effect upon the safe and efficient use of the navigable airspace and
 41 would be a hazard to air navigation if constructed. The department may
 42 take into consideration findings and recommendations of other



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governmental agencies or interested persons concerning the proposed structure; however, such findings or recommendations are not binding on the department. Further, the requirements of this chapter do not supersede any other law.

(b) The department must consider an application for a permit for a period of sixty (60) days before making a final determination on the permit.

SECTION 4. IC 8-21-10-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. (a) **This section applies to:**

- (1) an existing public-use airport;**
- (2) a public-use heliport; and**
- (3) a planned expansion of an existing public-use airport or public-use heliport if the expansion plans have been certified by a licensed professional engineer.**

(b) If any of the obstruction standards set forth in this subsection are exceeded, the proposed structure is presumed to have a substantial adverse effect upon the safe and efficient use of the navigable airspace and would be a hazard to air navigation if constructed. Except as provided in section 9 of this chapter, the department shall not issue a permit for any proposed structure that would exceed any of the following obstruction standards:

- (1) A height that is five hundred (500) feet above ground level at the site of the object anywhere in the state.
- (2) A height that is two hundred (200) feet above ground level or above the established airport elevation, whichever is higher, within three (3) nautical miles of the established reference point of a public-use airport, excluding heliports, and that height increases in the proportion of one hundred (100) feet for each additional nautical mile of distance from the airport up to a maximum of five hundred (500) feet.
- (3) A height within a terminal obstacle clearance area, including an initial approach segment, a departure area, and a circling approach area, as defined by federal law and regulations, which would result in the vertical distance between any point on the object and an established minimum instrument flight altitude within that area or segment to be less than the required obstacle clearance.
- (4) A height within an enroute obstacle clearance area, as defined by federal law and regulations, including turn and termination areas of a federal airway or approved off-airway route that would increase the minimum obstacle clearance altitude.



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(5) The surface of a takeoff and landing area of a public-use airport or heliport or any imaginary surface as established under section 8 of this chapter. However, no part of the takeoff or landing area itself will be considered to be an obstruction.

~~(b)~~ (c) Except for traverse ways on or near an airport with an operative ground traffic control service, furnished by an air traffic control tower or by the airport management and coordinated with the air traffic control service, the standards set forth above in subsection ~~(a)~~ (b) apply to traverse ways used or to be used for the passage of mobile objects only after the heights of these traverse ways are increased by the following:

(1) Seventeen (17) feet for an interstate highway where overcrossings are designed for a minimum of seventeen (17) feet vertical distance.

(2) Fifteen (15) feet for any other public roadway.

(3) Ten (10) feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road.

(4) Twenty-three (23) feet for a railroad.

(5) For a waterway or any other traverse way not covered by subdivisions (1) through (4), an amount equal to the height of the highest mobile object that would normally traverse it.

SECTION 5. IC 36-7-4-604 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 604. (a) Before the plan commission certifies a proposal to the legislative body under section 605 of this chapter, the plan commission must hold a public hearing under this section.

(b) The plan commission shall give notice of the hearing by publication under IC 5-3-1. The notice must state:

(1) the time and place of the hearing;

(2) either:

(A) in the case of a proposal under section 606 or 607 of this chapter, the geographic areas (or zoning districts in a specified geographic area) to which the proposal applies; or

(B) in the case of a proposal under section 608 of this chapter, the geographic area that is the subject of the zone map change;

(Subdivision (2) does not require the identification of any real property by metes and bounds.)

(3) either:

(A) in the case of a proposal under section 606 of this chapter, a summary (which the plan commission shall have prepared) of the subject matter contained in the proposal (not the entire

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- 1 text of the ordinance);
- 2 (B) in the case of a proposal under section 607 of this chapter,
- 3 a summary (which the plan commission shall have prepared)
- 4 of the subject matter contained in the proposal (not the entire
- 5 text) that describes any new or changed provisions; or
- 6 (C) in the case of a proposal under section 608 of this chapter,
- 7 a description of the proposed change in the zone maps;
- 8 (4) if the proposal contains or would add or amend any penalty or
- 9 forfeiture provisions, the entire text of those penalty or forfeiture
- 10 provisions;
- 11 (5) the place where a copy of the proposal is on file for
- 12 examination before the hearing;
- 13 (6) that written objections to the proposal that are filed with the
- 14 secretary of the commission before the hearing will be
- 15 considered;
- 16 (7) that oral comments concerning the proposal will be heard; and
- 17 (8) that the hearing may be continued from time to time as may be
- 18 found necessary.
- 19 (c) The plan commission shall also provide for due notice to
- 20 interested parties at least ten (10) days before the date set for the
- 21 hearing. The commission shall by rule determine who are interested
- 22 parties, how notice is to be given to interested parties, and who is
- 23 required to give that notice. However, if the subject matter of the
- 24 proposal abuts or includes a county line (or a county line street or road
- 25 or county line body of water), then all owners of real property to a
- 26 depth of two (2) ownerships or one-eighth (1/8) of a mile into the
- 27 adjacent county, whichever is less, are interested parties who must
- 28 receive notice under this subsection.
- 29 (d) The hearing must be held by the plan commission at the place
- 30 stated in the notice. The commission may also give notice and hold
- 31 hearings at other places within the county where the distribution of
- 32 population or diversity of interests of the people indicate that the
- 33 hearings would be desirable. The commission shall adopt rules
- 34 governing the conduct of hearings under this section.
- 35 (e) A zoning ordinance may not be held invalid on the ground that
- 36 the plan commission failed to comply with the requirements of this
- 37 section, if the notice and hearing substantially complied with this
- 38 section.
- 39 (f) The files of the plan commission concerning proposals are public
- 40 records and shall be kept available at the commission's office for
- 41 inspection by any interested person.
- 42 (g) METRO. In the case of a proposal to amend a zoning map under

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section 608 of this chapter or in the case of a proposed approval of a development plan required by a zoning ordinance as a condition of development, a person may not communicate before the hearing with any hearing officer, member of the historic preservation commission, or member of the plan commission with intent to influence the officer's or member's action on the proposal. Before the hearing, the staff may submit a statement of fact concerning the physical characteristics of the area involved in the proposal, along with a recital of surrounding land use and public facilities available to serve the area. The staff may include with the statement an opinion of the proposal. The statement must be made a part of the file concerning the proposal not less than six (6) days before the proposal is scheduled to be heard. The staff shall furnish copies of the statement to persons in accordance with rules adopted by the commission.

(h) METRO. In the case of a proposal to amend a zoning map under section 608 of this chapter, this subsection applies if the proposal affects only real property within the corporate boundaries of an excluded city. Notwithstanding the other provisions of this section, the legislative body of the excluded city may decide that the legislative body rather than the plan commission should hold the public hearing prescribed by this section. Whenever the plan commission receives a proposal subject to this section, the plan commission shall refer the proposal to the legislative body of the excluded city. At the legislative body's first regular meeting after receiving a referred proposal, the legislative body shall decide whether the legislative body will hold the public hearing. Within thirty (30) days after making the decision to hold the hearing, the legislative body shall hold the hearing, acting for purposes of this section as if the legislative body is the plan commission. The legislative body shall then make a recommendation on the proposal to the plan commission. After receiving the excluded city legislative body's recommendation (or at the end of the thirty (30) day period for the public hearing if the proposal receives no recommendation), the plan commission shall meet and decide whether to make a favorable recommendation on the proposal. If the proposal receives a favorable recommendation from the commission, the proposal shall be certified to the county legislative body as provided in section 605 of this chapter.

(i) Before a proposal involving a structure regulated under IC 8-21-10 may be considered, the plan commission must have a copy of the approved permit for the structure from the Indiana department of transportation.

SECTION 6. IC 36-7-4-918.5 IS AMENDED TO READ AS

SB 337—LS 7468/DI 94+



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1 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 918.5. A board of
2 zoning appeals shall approve or deny variances from the development
3 standards (such as height, bulk, or area) of the zoning ordinance. A
4 variance may be approved under this section only upon a determination
5 in writing that:

6 (1) the approval will not be injurious to the public health, safety,
7 morals, and general welfare of the community;

8 (2) the use and value of the area adjacent to the property included
9 in the variance will not be affected in a substantially adverse
10 manner; ~~and~~

11 (3) the strict application of the terms of the zoning ordinance will
12 result in practical difficulties in the use of the property. However,
13 the zoning ordinance may establish a stricter standard than the
14 "practical difficulties" standard prescribed by this subdivision;
15 **and**

16 **(4) a proposal involving a structure regulated under**
17 **IC 8-21-10 has an approved permit for the structure from the**
18 **Indiana department of transportation.**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill No. 337, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, line 26, delete "this chapter" and insert "**subsection (a)**".
and when so amended that said bill do pass.

(Reference is to SB 337 as introduced.)

SERVER, Chairperson

Committee Vote: Yeas 11, Nays 0.

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